

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007 IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)." A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED ON ANY PARTY NOT REPRESENTED BY COUNSEL UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT [HTTP://WWW.CA2.USCOURTS.GOV/](http://www.ca2.uscourts.gov/)). IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a stated term of the United States Court of Appeals for the Second Circuit, held
at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of
New York, on the 17th day of July, two thousand eight.

PRESENT:

**HON. RALPH K. WINTER,
HON. CHESTER J. STRAUB,
HON. DEBRA ANN LIVINGSTON,**
Circuit Judges.

LIN CHEN,

Petitioner,

v.

MICHAEL B. MUKASEY, ATTORNEY GENERAL,¹
Respondent.

**06-1609-ag
NAC**

¹Pursuant to Federal Rule of Appellate Procedure 43(c)(2), Attorney General Michael B. Mukasey is automatically substituted for former Attorney General Alberto R. Gonzales as the respondent in this case.

1 **FOR PETITIONER:** **Jeffrey E. Baron, New York, New York.**

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3 **FOR RESPONDENT:** **Gregory G. Katsas, Acting Assistant Attorney General,**
4 **Linda S. Wernery, Assistant Director, Gregory M.**
5 **Kelch, Attorney, United States Department of Justice,**
6 **Civil Division, Office of Immigration Litigation,**
7 **Washington, D.C.**
8

9 UPON DUE CONSIDERATION of this petition for review of a decision of the Board of
10 Immigration Appeals (“BIA”), it is hereby ORDERED, ADJUDGED, AND DECREED, that the
11 petition for review is DENIED.

12 Petitioner Lin Chen, a native and citizen of the People’s Republic of China, seeks review
13 of the March 27, 2006 order of the BIA affirming the November 29, 2004 decision of
14 Immigration Judge (“IJ”) Gabriel C. Videla: (1) premitting his application for asylum; and (2)
15 denying his application for withholding of removal and relief under the Convention Against
16 Torture (“CAT”). *In re Lin Chen*, No. A78 211 466 (B.I.A. Mar. 27, 2006), *aff’g* No. A78 211
17 466 (Immig. Ct. N.Y. City Nov. 29, 2004). We assume the parties’ familiarity with the
18 underlying facts and procedural history of the case.

19 When the BIA issues an opinion that fully adopts the IJ’s decision, we review the IJ’s
20 decision. *See Chun Gao v. Gonzales*, 424 F.3d 122, 124 (2d Cir. 2005). Even assuming the IJ’s
21 adverse credibility determination was improper, we must deny Chen’s petition for review.

22 Chen failed to raise his CAT claim based on his illegal departure and his alleged fear of
23 persecution because Chinese officials are aware that he applied for asylum in the United States in
24 either his brief to the BIA or his brief to this Court. Accordingly, we deem those claims
25 abandoned. *See Gui Yin Liu v. INS*, 508 F.3d 716, 723 n.6 (2d Cir. 2007) (citing *Yueqing Zhang*
26 *v. Gonzales*, 426 F.3d 540, 545 n.7 (2d Cir. 2005)). Similarly, as Chen failed to argue before the

1 BIA that the IJ erred in pretermittting his asylum application and that he established eligibility for
2 asylum and withholding of removal based on his resistance to China's coercive population
3 control program, and as the government raises this failure to exhaust in its brief to this Court, we
4 decline to consider those arguments. *See Lin Zhong v. U.S. Dep't of Justice*, 480 F.3d 104,
5 119–20 (2d Cir. 2007); *see also id.* at 124. Moreover, under our decision in *Shi Liang Lin v. U.S.*
6 *Dep't of Justice*, 494 F.3d 296 (2d Cir. 2007) (en banc), Chen is not eligible for asylum based
7 solely on his wife's alleged forced abortion. *Id.* at 314. To the extent that he argues the contrary,
8 we deny his petition.

9 For the foregoing reasons, the petition for review is DENIED. As we have completed our
10 review, the pending motion for a stay of removal in this petition is DENIED as moot.

11 FOR THE COURT:
12 Catherine O'Hagan Wolfe, Clerk
13

14 By: _____
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